

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ELLIS PATILLO,

Defendant.

23-CR-539 (JMF)

MEMORANDUM OPINION
AND ORDER


JESSE M. FURMAN, United States District Judge:

Defendant Ellis Patillo, charged in a six-count indictment with drug, firearm, and robbery charges, moves to suppress materials extracted from a cellphone seized incident to his arrest and searched pursuant to a judicial warrant and to dismiss Count Three of his indictment, which charges him with brandishing a firearm in relation to a Hobbs Act robbery, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and (ii) and 2. *See* ECF No. 19. Upon review of the parties' motion papers, the motion is DENIED substantially for the reasons stated in the Government's memorandum of law. *See* ECF No. 20. First, Patillo fails to show that the admitted failure to file an inventory as required by Rule 41 of the Federal Rules of Criminal Procedure was "intentional and deliberate" or caused him any prejudice. *United States v. Burke*, 517 F.2d 377, 386-87 (2d Cir. 1975); *see, e.g., United States v. Daskal*, 676 F. Supp. 3d 153, 178 n.13 (E.D.N.Y. 2023) (noting, in denying a similar motion to dismiss, that the required inventory need only reference the seized cellphone and need not list the "responsive digital files"). Second, Patillo's argument for dismissal of Count Three is, as he admits, *see* ECF No. 19, at 5, foreclosed by the Second Circuit's binding decision in *United States v. McCoy*, 58 F.4th 72 (2d Cir. 2023).

The Clerk of Court is directed to terminate ECF No. 19.

SO ORDERED.

Dated: June 4, 2024
New York, New York


JESSE M. FURMAN
United States District Judge